

STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG No. 910-CM

Petition of Total Call Mobile, Inc., for a certificate of)
public good to operate as a provider of commercial)
mobile radio services in Vermont)

Order entered: 11/19/2009

I. INTRODUCTION

Total Call Mobile, Inc. ("Total" or "Company"), requests issuance of a certificate of public good ("CPG"), pursuant to 30 V.S.A. § 231 and the Vermont Public Service Board's ("Board") Order in Docket No. 5808, to provide commercial mobile radio service ("CMRS") in Vermont. In this Order, the Board concludes that Total should be issued a CPG as requested to allow the Company to begin operating as a commercial mobile radio carrier within the state.

II. PROCEDURAL HISTORY

On October 19, 2009, Total, pursuant to 30 V.S.A. § 231, the provisions outlined in Docket No. 5808, and the rules and regulations of the Board, filed a Commercial Mobile Radio Service Provider Registration Form ("Registration Form") seeking a CPG to offer CMRS services in the State of Vermont.¹ On November 16, 2009, the Vermont Department of Public Service ("Department") filed a letter with the Board in which it recommended that a CPG be granted without the need for investigation or hearings. The Board has reviewed the petition and accompanying documents and agrees that a CPG should be issued without hearing. As a result, newspaper publication is not required prior to issuance of the CPG. 30 V.S.A. §§ 102(a), 231(a).

Based upon the Registration Form and accompanying documents, the Board makes the following findings.

1. On November 4, 2009, the Company completed its application by filing its Vermont Secretary of State Certificate of Authority.

III. FINDINGS

1. Total, headquartered at 707 Wilshire Boulevard, Floor 12, Los Angeles, CA 90017, will provide commercial mobile radio services in Vermont in accordance with its license issued by the Federal Communications Commission. Registration Form at 1.

2. CT Corporation System, 400 Cornerstone Drive, Suite 240, Williston, VT 05495, is Total's registered agent in Vermont. Registration Form at 2.

3. Total has all the necessary authority to transact business in Vermont. Total is incorporated in Delaware and was granted a Certificate of Authority on January 30, 2006, by the Vermont Secretary of State. Registration Form at Attachment.

IV. DISCUSSION

Pursuant to 30 V.S.A. §§ 102 and 231, companies intending to offer telecommunications services in Vermont are required to obtain a CPG by the Board.² In the past, acquiring a CPG generally involved a substantial amount of process, in which the Board reviewed company filings, assessed whether applicants meet substantive criteria, and then, with or without hearing, conditioned and granted a certificate.³

For certain carriers, the Board's process of the CPG review has changed in recent years. In order to accommodate the entry of competitive service providers, while continuing to protect Vermont consumers, the Board has significantly modified its certification criteria and review process: in 1995, for companies offering coin-operated telephone service ("COCOTS");⁴ and in 1999, for competitive local exchange companies ("CLECs").⁵

In order to comply with the dictates of Section 332 of the Omnibus Budget and Reconciliation Act and to meet its obligations under 30 V.S.A. §§ 102 and 231, the Board has devised a registration/identification process for CMRS providers in Vermont. Unlike the standard certification review, or even the more streamlined approaches for CLECs or COCOTs,

2. Section 102 applies for newly-formed Vermont corporations, while § 231 applies to all others.

2. See, e.g., *In re Vermont Electric Power Producers, Inc.*, 165 Vt. 282, 683 A.2d 716 (1996); see also *In re Quechee Service Co.*, 166 Vt. 50, 690 A.2d 354 (1996).

4. See Docket 5566, Order of 1/6/95 at 37-38 (COCOT certification).

5. See Docket 5713, Order of 2/4/99 at pp. 57-65 (CLEC certification).

the registration/identification process proposed below involves no substantial Board review nor does it condition the entry into Vermont's telecommunications market to ensure compliance with federal law.⁶

The Board has observed that 30 V.S.A. §§ 102 and 231 were initially designed for two purposes: (1) to protect consumers against incompetent or dishonest businesses; and (2) to protect existing providers by limiting or eliminating their competitors.⁷ The first rationale for certification consumer protection remains one of the Board's policy objectives. The second purpose — the franchise protection rationale — is based on a concern for economic efficiency and the existence of natural monopoly. The second purpose does not apply where structural conditions allow meaningful competition to exist.

In addition to the two purposes just mentioned, certification of providers serves administrative and informational purposes as well. Through the compilation of the names of providers, the Board and the Department are able to oversee and ensure the proper functioning of Vermont's telecommunications market, including the ongoing maintenance of the Vermont Universal Service Fund.⁸

In order for the Board to issue a CPG under 30 V.S.A. § 102 or § 231, it is required to find that the proposed public service operations of the applicant in Vermont will "promote the general good of the state."⁹ These statutory provisions do not specify any criteria for the Board to apply when making this finding. In the past, however, the Board has recognized that competitive markets possess two important characteristics. First, a competitive market contains numerous providers, thereby largely obviating the need to assure that the financial and

6. *Id.*, 47 U.S.C. § 332(c)(3)(A).

7. *Id.* at 59.

8. This includes keeping track of all telecommunications providers to ensure appropriate operation of the Vermont Universal Service Fund ("VUSF"), and in order to provide information and advice to the Vermont General Assembly on matters of telecommunications law and policy. *See, e.g.*, 30 V.S.A. § 7523. Pursuant to this statute, the Board must establish the VUSF surcharge rate and enter an order setting the rate for each fiscal year. *Id.* Pursuant to her duties under 30 V.S.A. § 6, the Clerk of the Board also provides the National Exchange Carrier Association ("NECA"), the fiscal agent for the VUSF, with the names of companies as they are certified in Vermont in order for NECA to keep its records current. *See also* Docket 5959, Order of 6/19/97.

9. 30 V.S.A. §§ 102, 231.

managerial character of a company meets certain standards.¹⁰ If a company does not manage its business properly, it may fail, but there will be other companies to take its place. Second, customers in a competitive market have the fundamental ability to choose a competitor if their existing provider does not meet their needs.¹¹

In the CMRS context, where the Board's authority to regulate rates and entry is preempted under 47 U.S.C. § 332(c)(3)(A), the Board must still be able to ensure that Vermont consumers are afforded adequate protections with respect to other terms and conditions of service.¹² In order to do this, the Board requires minimum filing criteria listed below for the registration of CMRS providers pursuant to 30 V.S.A §§ 102 and 231. Under this registration format, a CMRS company that completes and submits the form, *i.e.*, identifies itself to the Board, will be presumed to comply with the statutory certification standards of 30 V.S.A §§ 102 and 231. Upon receipt of a completed registration form, the Board will issue the CPG.

The Board has generally held that CMRS should be subject to little regulation.¹³ While we have no interest in unduly burdening CMRS providers, the provision of CMRS in Vermont raises numerous economic and consumer protection implications. Consequently, we have adopted a registration mechanism that imposes minimal requirements upon CMRS providers, but which provides them with the notice of their duties as companies operating in the State of Vermont.

10. In a competitive context, that company's rate of investment, financial stability, control of affiliate interests, management, technical knowledge and ability, and business reputation, though important, generally no longer require in-depth regulatory scrutiny. See *e.g.*, Docket 5454, Order of 1/8/92 at 45. "The primary purpose for financing review is to ensure that utilities do not incur unnecessary expenses which can later be collected from customers. Where rates are not tied into regulated costs of service as established by the Board, but are the product of the forces of competition, there is a lesser need for detailed prior review of such financings." Because the rates at issue here fall into the latter category – they are the product of competitive forces – it follows that a less stringent review of a firm's financial position is appropriate. *Id.*

11. Also, the service provider in this context is, by definition, not the sole provider of an essential service.

12. See Docket 5808, Order of 3/1/00. As revised by Omnibus Budget Reconciliation Act of 1993, Section 332(c)(3) of the Communications Act of 1934 prohibits states from regulating CMRS rates and entry. 47 U.S.C. § 151 et seq. § 6002(b)(2) of OBRA amends § 332(c) and (d) of the Communications Act of 1934, and the amended 47 U.S.C. § 332 contains the provisions regarding preemption. The same statute, however, expressly reserves to states the authority to regulate the "other terms and conditions of commercial mobile service," although it does not specify what, precisely, is included within the purview of "other terms and conditions." 47 U.S.C. § 332(c)(3)(A)

13. Docket 5808, Order of 3/1/00.

Because it is our understanding that CMRS providers no longer use tariffs, but rather "contract forms," a condition of certification in Vermont is that CMRS file an up-to-date contract form with the Board in order to keep it informed of the company's terms and conditions of service. We find this to be an acceptable practice and will deem a company to have met the tariff filing requirement by providing the Board with the applicable contract forms containing all terms and conditions of service.

We also require CMRS providers to file for informational purposes any changes in its terms and conditions of service. If and when Total changes any other terms and conditions of service, it is Total's duty and responsibility to file notice of such changes at least 45 days prior to the effective date of the changes.

The Board also requires that all telecommunications providers offering prepaid calling services to post a bond, payable to the Board, in an amount equal to their projected Vermont intrastate revenues from its prepaid calling services for the first 12 months of operation. The Board has imposed such a requirement because of its concern regarding the potential rights to consumers associated with payment in advance of receipt of service.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Based on the above findings, discussion and conclusion, the provision of commercial mobile radio services by Total Call Mobile, Inc. ("Total"), will promote the general good of the State of Vermont, pursuant to the provisions of 30 V.S.A. § 231. A certificate of public good ("CPG") shall be issued to that effect, subject to the conditions contained in the CPG.

2. Total shall file a copy of its standard service contract with the Board within sixty (60) days of the date of this Order. Total shall provide the Board with all current terms and conditions of service through the regular submission of applicable contract forms forty-five (45) days in advance of implementation.

3. If Total at any time in the future proposes to offer prepaid calling services, it shall post a bond, payable to the Board, in an amount equivalent to its projected intrastate revenues from its prepaid calling service for the first twelve (12) months of operation.

4. Total is authorized to do business in the State of Vermont under the name Total Call Mobile, Inc. If Total conducts business in Vermont under any other name, it shall file a notice of the new trade name with the Clerk of the Board and the Vermont Department of Public Service at least fifteen days before commencing business under the new trade name.¹⁴

5. Total shall contact the Vermont Department of Public Service and make arrangements for further filings containing company Annual Reports, and a copy of Gross Revenue Tax payments for calendar year ends on forms available from the Department.

Dated at Montpelier, Vermont, this 19th day of November, 2009.

<u>s/James Volz</u>)	
)	
)	PUBLIC SERVICE
<u>s/David C. Coen</u>)	
)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: NOVEMBER 19, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.

14. For a corporate name change, see 11 V.S.A. § 4.01 and 30 V.S.A. § 231. Petitioner may wish to contact the Clerk of the Board for assistance.